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Summary record of the 2781st meeting
Held at Headquarters, New York, on Friday, 18 March 2011, at 10 a.m.

Chairperson: Ms. Majodina

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Serbia (*continued*) (CCPR/C/SRB/2, CCPR/C/SRB/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Serbia took places at the Committee table.*

2. **The Chairperson** invited the members of the delegation of Serbia to resume replying to the questions posed by Committee members at the previous meeting.

3. **Mr. Krstajić** (Serbia), responding to the Committee's request for clarification on how the prosecution of cases of inhuman and degrading treatment were subject to a statute of limitation, said that Serbia's Criminal Code set forth a definition of ill-treatment and torture. Although criminal prosecutions were subject to a statute of limitation, under article 108 of the Criminal Code, there was no statute of limitation for criminal prosecution and enforcement of penalty for genocide, crimes against humanity, war crimes against civilians, war crimes against the wounded and the sick, war crimes against prisoners of war, or for organizing or inciting genocide or war crimes.

4. **Mr. Vujić** (Serbia), in response to a question on witness protection, said that Serbia did everything in its power to ensure that witnesses called to testify in cases involving gross human rights violations were fully protected. Moreover, the families of victims of war crimes, including war crimes that had been perpetrated in Kosovo or Croatia, were invited to attend trials that were held in that connection, including trials held at the Belgrade War Crimes Court.

5. **Mr. Zivaljević** (Serbia), in response to a request for information on complaints made against police officers and on the suspension of officers under investigation, said that the organizational unit of the Ministry of the Interior investigated complaints about ill-treatment by police officers that were filed by citizens, in accordance with established procedures. If allegations of police ill-treatment were substantiated, the victims of that ill-treatment were invited to review actions taken in that regard and, if they were satisfied that those actions fully addressed their complaints, signed a declaration to that effect. If they were not satisfied, citizens were entitled to have their cases reviewed by special committees that investigated complaints of ill-treatment by police officers. Serbia had established 26 of those committees within police administrations and 1 committee within the Ministry of the Interior.

6. The police were obliged to respond to citizens' complaints within 30 days. Citizens could also bring criminal charges at a competent court in connection with ill-treatment by the police. Although only a few complaints had been submitted in that manner, citizens could also file complaints with local police administrations. In 2010, a total of 208 out of 2,370 complaints filed with local police administrations had been substantiated. Police officers who perpetrated criminal offences were subject to criminal prosecution and were suspended until all relevant disciplinary action against them was completed. In Operation Sabre, criminal charges had been brought against one police officer and appropriate disciplinary action taken against other officers.

7. **Ms. Mohorović** (Serbia), responding to a question on the funds allocated to the Plan of Action for the Implementation of the National Strategy for Improving the Position of Women and the Advancement of Gender Equality, said that the Plan of Action aimed to address gender-based economic and representational inequality and combat domestic violence. Nearly €1.5 million had been allocated for the implementation of the Plan of Action in 2010 and €1.65 million in 2011. A further $1.4 million had been specifically earmarked for efforts to combat domestic violence.

8. Turning to the issue of legislation to combat discrimination against women, she said that, with a view to increasing women's representation in decision-making bodies, Serbia had enacted legislation that provided for interim measures to be taken in connection with local and national elections; by law, at least 30 per cent of candidates in parliamentary and National Minority Council elections should be the underrepresented gender. Public authorities were also obliged to take interim measures to restore gender balance if less than 30 per cent of civil servants were the underrepresented gender. Over 20 per cent of parliamentarians at the national level, 27 per cent of municipal councillors, over 30 per cent of judges and almost 20 per cent of civil servants in Serbia were women.

9. Under anti-discrimination legislation, victims of discriminatory action could appeal to the Commissioner for the Protection of Equality, who investigated complaints and made recommendations thereon. If those recommendations were not acted on, the Commissioner was authorized to take steps to draw the public's attention to the act of discrimination that had occurred. Both the Commissioner and the victims of discrimination could, moreover, initiate legal proceedings before a competent court, which was usually the general court in the municipality in which the claimant or the respondent was resident. The Commissioner could file complaints on behalf of individuals, if the individuals concerned provided their written consent, or on behalf of groups, and, inter alia, sought to prevent further discriminatory action from occurring and to ensure that victims received redress.

10. Furthermore, in accordance with a ruling by the Supreme Court, complaints could be filed by individuals that had deliberately exposed themselves to discrimination with a view to testing the effectiveness of anti-discrimination legislation in force. Individuals could not, however, seek damages for discrimination in such cases. No data was currently available on the number of anti-discrimination complaints that had been filed.

11. **The Chairperson** invited members of the Committee to pose follow-up questions.

12. **Mr. Thelin** commended the fact that the curriculum of the Judicial Training Centre covered the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. He asked whether the Ombudsman of Serbia had received all the funding that he had requested. The Ombudsman had received 81 complaints regarding the rights of persons deprived of their liberty in 2009 and 189 such complaints in 2010. In the light of that dramatic increase, the Ombudsman needed to analyse why complaints were submitted. Furthermore, the Ministry of the Interior needed to conduct its own independent analysis and take appropriate action.

13. **Sir Nigel Rodley** requested further clarification on how the statute of limitation applied to offences under article 137 of the Criminal Code.

14. **Mr. Vujić** (Serbia) invited members of the Committee to take part in training courses at the Judicial Training Centre and said that more complaints were being filed with the Ombudsman because persons held in detention were now more aware of their rights. Statistics from the Supreme Court administration department had revealed that approximately 70 per cent of complaints had been submitted by detainees who were not satisfied with the quality and quantity of the food they were receiving. The Committee against Torture had concluded that violence against detainees had not increased in Serbia and had noted that Serbia had implemented measures to ensure that any incidents of violence were investigated. The fact that more complaints were being filed indicated that individuals felt increasingly confident that they could defend their rights by appealing to the competent authorities.

15. **Ms. Stepanović** (Serbia) said that, although the Ombudsman had been appointed in 2007, his deputy for persons in custody had only started work in 2009. Brochures explaining how to submit complaints to the Ombudsman, together with the relevant complaint submission forms, had been made available to prisoners. The increase in the number of complaints received also indicated that persons held in detention were increasingly confident that the Ombudsman was an independent mechanism that could protect their rights.

16. **Ms. Mohorović** (Serbia) said that the Ombudsman drew up an annual budget that was then integrated by the Government into Serbia's national budget and submitted to Parliament for approval. In that regard, the Ombudsman had received all the funds that he had requested. Moreover, some of those funds had been returned to the Ministry of Finance in 2010 because the Ombudsman had hired fewer staff than anticipated.

17. **Mr. Vujić** (Serbia) said that, under legislation in force, the Government could not impose conditions on the Ombudsman and that, within the framework of efforts to ensure his independence, the Ombudsman must approve any Government-imposed conditions on his activities.

18. **Mr. Zivaljević** (Serbia) said that the Ministry of the Interior maintained an excellent relationship with the Ombudsman. The Ministry was aware that standards in detention facilities in police stations remained unacceptable and carried out an annual analysis of complaints received in connection with police officer misconduct. In 2010, following investigations into a complaint, proceedings against a police officer had been initiated and a detention facility closed.

19. **Mr. Krstajić** (Serbia) said that criminal prosecutions were subject to a relative statute of limitations. Under article 103 of the Criminal Code, the time period that must elapse before that statute of limitation could be invoked depended on the penalty prescribed by law for the offence in question. For example, if a prison sentence of between 30 and 40 years was prescribed for an offence, the statute of limitation was 25 years, whereas, if a sentence of 15 years was prescribed, the statute of limitation was 20 years. The date from which the limitation period was calculated was reset after every interruption in a case. However, under article 104 of the Criminal Code, an absolute statute of limitation came into effect after expiry of double the time period prescribed under the relative statute of limitation for the offence in question. Once the absolute statute of limitation came into effect in a case, criminal prosecution was no longer possible. Under article 137 of the Criminal Code, a prison sentence of up to eight years was imposed for the offence of ill-treatment and torture; for that offence, the relative statute of limitation was 10 years and the absolute statute of limitation was 20 years.

20. **Sir Nigel Rodley** said that he was taken aback that the gravest penalty for such a crime as torture was only 8 years — a matter raised also in the past by the Committee against Torture — and he wondered if there was any intention to increase the sentence to make it more reflective of the gravity of the crime, especially when other crimes were punishable in Serbia by 20 to 25 years.

21. **The Chairperson** invited the Committee to put questions to the delegation regarding questions 16 to 28 on the list of issues.

22. **Mr. Flinterman**, commending Serbia for having drawn attention to the problem of human trafficking (question 16 on the list) and for endeavouring to combat it, asked how many traffickers had been prosecuted, what the sentences had been, and how many cases had involved transborder trafficking; whether victims had been made aware of their rights by the provision of free legal assistance; what became of trafficking victims given temporary residence permits while their cases were being tried if in fact no trial was held or after the trial was over; how trafficked women were being encouraged to come forward to report their exploitation; and whether the Government would take over the role of providing support for the victims, currently being furnished only by non-governmental organizations, or at least give the NGOs financial support.

23. He would appreciate more details regarding the treatment of prisoners (question 17): what medical and psychological services were available for detainees with disabilities, how prisoners were notified of their right to medical and legal services, and how the public at large was informed about prisoners' rights.

24. He welcomed the Government's efforts to address the obvious underrepresentation of members of minorities in government, public service and the judiciary (question 27). Information should be given about the strategies the Government was pursuing to include minorities in national, provincial and local government, the judiciary and the police force, and about any affirmative action on their behalf.

25. **Sir Nigel Rodley** asked what had been the real impact of the measures the Government had taken to relieve overcrowding in prisons (question 18) and when it thought the problem would finally be resolved to its satisfaction.

26. **Mr. Thelin** asked, in connection with question 19, why, in the course of the reform of the Serbian judiciary in 2010, it had been deemed advisable to reduce the number of judges by almost 15 per cent, a process which, moreover, had been characterized by both the Ombudsman and NGOs as somewhat arbitrary and not transparent. Also, he would like to learn more about the composition of the High Judicial Council (report, para. 333 et seq.), which had such a big role in the reform of the judiciary; and if the appointment of its members by Parliament risked politicizing it. The general situation in the courts in Serbia was not good, according to the Ombudsman: lengthy trials with many delays, absent judges, untimely or incomplete decisions, even attempts by a senior member of the executive to influence court proceedings. The whole judicial system seemed flawed and he wondered what the Government planned to do about it.

27. The written responses acknowledged (para. 100) that the War Crimes Prosecutor's Office often worked under pressure and threat, and it would be useful to know what the Government was doing to safeguard the full functioning of the Office and to prosecute those seeking to impede it. On a related point having to do with question 25 of the list of issues, the director of the Humanitarian Law Centre had been charged under the criminal defamation legislation for alleging that there

had been attempts to bribe the War Crimes Prosecutor's Office. He drew attention to the Committee's draft general recommendation on article 19 of the Covenant, paragraph 49 of which urged the decriminalization of anti-defamation laws so as not to stifle dissent.

28. He would like more information on how the Government was expanding free legal aid (question 21), currently available to only about 15 per cent of accused persons. The written replies to question 26 indicated that elections had been held for all the national councils of national minorities in 2010, but he would appreciate comment on reports that in Bosnia the official 50 per cent threshold of minority members had been raised to 66 per cent in order to make it difficult to set up the national council there.

29. Regarding the dissemination of the Covenant (question 28), he wondered how much of an impact NGO participation in the preparation of the periodic report had had on the final draft; in how many languages the text of the Covenant was disseminated and if it was available on the Internet, in libraries and the like, to give all citizens access to it; and whether the Covenant and the Committee's findings were brought to the attention of the legal community.

30. **Mr. Salvioli**, referring to freedom of religion (question 23), asked whether military service in Serbia had now become voluntary by law (written replies, para. 104) and whether conscientious objectors who had left the country to avoid military service in the past would benefit from the general amnesty (para. 106). With reference to question 24, he wondered whether the legal distinction between traditional churches and communities and other religious communities and organizations might not lead to discrimination in the teaching of religion in the schools and in access to public services; and whether the Government intended to simplify the registration procedures for non-traditional religious communities in order to eliminate barriers that were incompatible with the Covenant.

31. **Mr. Neuman** said that the Committee was concerned by violence against journalists and human rights defenders in Serbia and the chilling of political criticism by prosecutions for defamations and other similar judicial proceedings (ques. 25). The written replies gave examples of crimes against freedom of expression between 2008 and 2010, and the Ombudsman and NGOs had provided others ranging from murder, in some cases unresolved, to injury to threats. It was very important for the building of democracy for the press to discuss issues that certain segments of society or even the majority would prefer to ignore. In addition, violations against human rights defenders had been noted by the Council of Europe Commissioner for Human Rights against both lesbian/gay/bisexual/transgender individuals and their human rights defenders; and the Ombudsman's Office had been attacked with impunity on those same grounds. He would like details of any specific instances in which the government's response had gone beyond the arrest of some perpetrators of such violence to trials, convictions and sentencing.

32. Her welcomed the 2010 decision of the Constitutional Court to invalidate the amendments to the Law on Public Information allowing journalists to be fined for defamation (written replies, para. 118). It would interesting to know on what principles that decision had been based, and whether it had changed the court practice in defamation cases and the Government's regulation of the press, and also if any new legislation was planned.

33. **Ms. Motoc** asked how the Government was dealing with its Roma minority and what protections it was currently affording them.

34. *The meeting was suspended at 11.15 a.m. and resumed at 11.45 a.m.*

35. **The Chairperson** invited the delegation to continue its replies to oral questions put by members of the Committee in connection with questions 16 to 28 on the list of issues.

36. **Mr. Krstajić** (Serbia), while agreeing with Sir Nigel Rodley that a maximum prison sentence of eight years for such a heinous crime as torture seemed inadequate, said that the working group reviewing the Criminal Code would take that point into consideration.

37. **Mr. Živaljević** (Serbia), on the subject of question 16 concerning human trafficking, said that the Government had established a national action plan to combat that scourge. While some perpetrators and victims of human trafficking were foreign nationals, the majority were Serbian citizens. The most common form of abuse was sexual exploitation; many of the victims were children and minors. Criminal charges had been brought against 725 perpetrators in 2009 and 2010.

38. With regard to victims of Serbian nationality, the Government had set up protection and rehabilitation

programmes comprising continuing education, professional training and employment assistance, while foreign victims were either safely returned to their country of origin or allowed to stay in the country upon being granted temporary residence; those who did not have sufficient financial means to sustain themselves were provided with adequate accommodation, meals and basic living conditions.

39. The UN.GIFT Joint Programme to Combat Human Trafficking, developed by the United Nations High Commissioner for Refugees, the International Organization for Migration and the United Nations Office on Drugs and Crime in Serbia, had been established to operationalize the national action plan; it would strengthen national capacities and improve coordination within the national referral mechanism; create a sustainable framework for systematic prevention of trafficking in human beings among particularly vulnerable groups; strengthen the criminal justice responses of the Government of Serbia; and improve mechanisms for protection and reintegration of potential and actual victims of human trafficking.

40. In addition, October had been declared "Anti-Trafficking Month"; in cooperation with NGOs, awareness-raising activities had been organized and a special hotline had been set up to encourage victims to report criminal acts of trafficking. Lastly, as confirmed by the European Commission's Serbia 2010 Progress Report, Serbia had made some progress in fighting trafficking of human beings. Procedures to identify victims had been adopted and the number of identified victims had continued to increase, while the regional trend pointed towards a decrease in trafficking of human beings. Law enforcement authorities had remained active and regional and international cooperation had improved.

41. **Ms. Stepanović** (Serbia), replying to questions about prison conditions and the treatment of prisoners with disabilities, said that prisoners benefited from the same health services as regular citizens. Those with substantially impaired mental capacity were offered psychiatric treatment and confinement in a medical institution; most prisons had been retrofitted with ramps and toilets to accommodate inmates with physical disabilities. The Government had adopted a comprehensive strategy with a specific action plan and time frames to address the problem of prison overcrowding; the Criminal Code was being reviewed and prosecutors and judges were being educated to use home detention as an alternative to imprisonment, and to recommend parole for prisoners who had served half of their sentence. A special judge would be appointed to monitor enforcement of sanctions and educate prison officials on the treatment of inmates; prison administration systems were being computerized to increase efficiency.

42. With regard to infrastructure, some prisons had been expanded and new ones were being built across the country with funding from both the Serbian Government and the Council of Europe Development Bank; they were slated for completion between 2011 and 2014.

43. **Mr. Vujić** (Serbia), in response to the query on the lack of transparency in the selection of judges, said that the number of judges had been reduced to reflect the new configuration and reduced workload of the courts. However, judges who had not been re-elected had the right to complain to the Constitutional Court of Serbia to have their case reviewed. The election process had been objective and transparent, with the list of candidates having been made public and some of them having campaigned openly, even posting their resumes on the website of the High Judicial Council.

44. The High Judicial Council was composed of five permanent members and eight invited members; the permanent members were the President of the Supreme Court of Serbia, the Republican Public Prosecutor and the Minister of Justice, all ex officio members; one lawyer elected by the Bar Association of Serbia and one member elected by the National Assembly; the invited members comprised six judges elected by the Supreme Court of Serbia, a prosecutor elected by the Deputy Republican Public Prosecutor, and another elected by district public prosecutors.

45. Turning to the new selection process, he said that first-time judges and prosecutors would be drawn from a list of graduates of the Justice Academy, which would be approved by the High Judicial Council and ratified by Parliament. With regard to concerns about the length of trials, judges were being trained, computers were being introduced into case management systems, and the laws governing civil and criminal procedures were being amended to expedite the administration of justice.

46. Lastly, with reference to the allegations about the statement made by the Secretary of State of the Ministry of Economic Development concerning the payment of workers' salary arrears delaying the

judicial process, he said that it was a rather unfortunate statement which had had no bearing on the case and had been denounced publicly by the judges and President of the Supreme Court of Serbia.

47. **Mr. Knežević** (Serbia) said that the duty of war crimes prosecutors was to investigate war crimes committed by their fellow citizens. In the area of the former Yugoslavia, all civilians, regardless of their ethnicity, felt that they had been victimized. They were very resistant to the prosecution of their own nationals; therefore prosecutors and judges were provided with uniformed and undercover security services to ensure their safety and that of their families.

48. Turning to the issue of freedom of expression and the case of Nataša Kandić, he said that the Office of the War Crimes Prosecutor had requested her to provide concrete evidence in support of her allegations. If the evidence supported the allegations, then there would be an investigation and those responsible would be held accountable. Defamation was not considered a criminal act and the intention was not to challenge freedom of expression. Rather, it was to avoid undermining the reputation of an office that had been positively assessed by the European Union and the Prosecutor at the International Criminal Tribunal for the former Yugoslavia.

49. **Mr. Vujić** (Serbia) said that work was ongoing to ensure that the right to representation was comprehensively upheld through the provision of free legal aid. The Ministry of Justice was drafting laws to provide legal aid in civil cases. While it was unclear how the aid would be financed and it was generally acknowledged that it was of no use to pass a law that could not be implemented owing to lack of funds, it hoped to submit in May a draft law requiring access to public defenders in civil cases, which would be in line with international treaty bodies.

50. A public defender could be appointed ex officio in serious criminal cases, but the court had not yet seen a need for it. A public defender was not required in less serious crimes but the defendant could request one and the State would decide on whether it was permissible. For example, people who did not pay taxes, including drug traffickers and money launderers, were not allowed free legal aid without showing evidence of having paid taxes. Amendments were being considered to ensure legal aid in all criminal cases; the hope was that the amendments would have been implemented by the next report to the Committee. Lastly, juvenile offenders were required by law to be represented by a lawyer specializing in juvenile law.

51. **Ms. Mohorović** (Serbia) said that the Constitution guaranteed the right to conscientious objection and it was possible to substitute military with civilian service. The National Assembly had instituted voluntary military service as from 1 January 2011. The Amnesty Law exempted citizens from liability for criminal offences in respect of military service and from mandatory military service. It also guaranteed destruction of military records on request.

52. Turning to freedom of religion, she said that the Law On Churches and Religious Communities recognized a difference between traditional churches and religious communities and other churches and religious communities only in respect of the Ministry of Religious Affairs registration process. Churches and religious communities with centuries of history in Serbia were considered traditional and followed a shortened registration process because they had been registered in the past, while newly formed churches and religious communities, which had previously been regulated under federal laws but had not been required to register, had to submit additional documents during the registration process to prove their history of compliance with the laws of the Republic of Yugoslavia. Statements from their congregations to establish that they had met the required number of members were also required. Once the newly formed churches or religious communities had registered they were considered legal entities.

53. It was important to note that article 3 of the Law on Churches and Religious Communities stated that religious freedom could not be exercised in such a way as to endanger the right to life, rights of the child, personal and family integrity or property, or to provoke hatred, violence or intolerance. Registration allowed the Government to ensure compliance with the article and to ensure that different organizations were not using the same name.

54. **Ms. Jašarević-Kužić** (Serbia) said that attacks on human rights defenders and journalists were not tolerated. Investigations intended to bring the perpetrators to justice were carried out promptly. In the case of *Vreme* magazine contributor Mr. Anastasijević, whose apartment had been the target of a grenade attack, the President of the Republic had personally

visited the journalist and called for a full investigation. Following the attack on Mr. Pancic, another contributor to *Vreme*, the Ministry of the Interior was able to classify the attack as an act of terrorism. An investigation into the attack was ongoing. Arrests had been made in the case of the injured "B92" cameraman. Attacks on homosexual human rights defenders and journalists were usually perpetrated by neo-Nazi groups. Sixteen such groups had registered as civil organizations and efforts were underway to disband them, as by inciting violence and hatred they violated the Constitution.

55. Legal measures had been implemented to protect journalists as they carried out their duties. Indeed, according to article 138 of the Criminal Code, journalists enjoyed a higher degree of protection in respect of threats to personal safety. While there was clear will to fully protect human rights defenders and journalists, improvement was needed in the investigation and sanctioning processes.

56. Turning to national minority councils, she said that all minorities were equally represented; out of 20 positions, 19 had been elected for the first time, 16 by direct vote and 3 by electoral assemblies. As was to be expected, there were some irregularities in the first election cycle since the passage of the Law on the Protection of the Rights and Freedoms of National Minorities, which would be addressed. A second election had been held for the Bosnian National Minority Council at the request of the Bosnian community because it had wanted to participate with three election lists, which was not permissible under the rules of procedure. The rules were amended and a second election was held to respect the will of the people.

57. **Ms. Mohorović** (Serbia) said that candidates for positions in public service, the judiciary or the police forces were not required to disclose their nationality. While central staff records were required by law, the data did not include nationality; therefore no database tracked minority numbers. However, some organizations maintained internal records. The Autonomous Province of Vojvodina, which had the most minorities, tracked public sector employees based on nationality and knowledge of minority languages. When electing judges, the High Judicial Council took into consideration the ethnic composition of the population the elected judge would be serving. The census law had established a reporting system to include open questions on minorities and languages.

58. **Mr. Živaljević** (Serbia) said that while there was no official information on minorities, the Ministry of the Interior had statistical data, which was included in paragraph 123 of the Replies from the Government of Serbia to the list of issues (CCPR/C/SRB/Q/2/Add.1).

59. **Mr. Thelin** said that it was not appropriate to invoke the law against defamation in cases of war crime investigations and freedom of expression. In its written response to outstanding questions, he would like the delegation to clarify the mechanisms used to address claims for reparations, including what ministries and other bodies were involved.

60. **Ms. Jašarević-Kužić** (Serbia) said that the delegation had responded to questions to the best of its ability and it would be glad to provide detailed written responses to outstanding questions. While resources were limited, the Government was committed to harmonizing the legal system with the European Union and international bodies while addressing urgent situations to the best of its ability. The concluding observations would be closely examined and fully met.

61. **The Chairperson** said that the Committee appreciated the honesty of the delegation and welcomed its plans to advance human rights, in particular in respect of the Roma, internally displaced and legally invisible persons. The Committee was also concerned at the gap between the existing laws to protect human rights and the reality on the ground. Lastly, the Committee remained very concerned about the use of criminal defamation legislation and violence against journalists and human rights defenders.

The meeting rose at 1 p.m.